

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2016 Legislative Session, Legislative Day No. : _____

Bill No.: _____

Expiration Date: _____

Introduced by: _____

A BILL TO AMEND CHAPTER 190 OF THE *TALBOT COUNTY CODE* TO ADOPT DEFINITIONS FOR SMALL, MEDIUM AND LARGE SCALE SOLAR ENERGY SYSTEMS, TO ESTABLISH SETBACKS, SCREENING, MITIGATION, SITING, AND DECOMMISSIONING REQUIREMENTS, TO ADOPT PROCEDURES FOR APPLICATION, REVIEW, AND APPROVAL, AND GENERALLY RELATING TO SOLAR ENERGY SYSTEMS

By the Council: _____

Introduced, read first time, ordered posted, and public hearing scheduled on _____ at _____ p.m. at the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By Order _____

Susan W. Moran, Secretary

A BILL TO AMEND CHAPTER 190 OF THE *TALBOT COUNTY CODE* TO ADOPT DEFINITIONS FOR SMALL, MEDIUM AND LARGE SCALE SOLAR ENERGY SYSTEMS, TO ESTABLISH SETBACKS, SCREENING, MITIGATION, SITING, AND DECOMMISSIONING REQUIREMENTS, TO ADOPT PROCEDURES FOR APPLICATION, REVIEW, AND APPROVAL, AND GENERALLY RELATING TO SOLAR ENERGY SYSTEMS

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Section 190.93.1 of the *Talbot County Code*, be adopted, as follows:

* * *

§190.93.1. Solar Energy Systems

A. The following are general requirements for all Solar Energy Systems (SES).

(1) Procedures for Approval.

(a) Small Scale SES require a building permit and a planting plan for screening.

(b) Medium Scale SES require a major site plan, building permit, and a landscaping and screening plan.

(c) Large Scale SES require a special exception, major site plan, building permit, a landscaping and screening plan, Reservation of Development Rights Agreement(s), and mitigation.

(d) Other site specific approvals, such as nontidal wetland permits, forest conservation plans, forest preservation plans, and habitat protection plans are also required.

(2) Siting Requirements.

(a) Rooftop Solar Systems or projects above existing lot coverage are preferable.

(b) Height:

[1] Rooftop Solar Systems shall not extend more than ten feet (10') above the surface of the roof. The total height of the building or structure, including the solar collection devices, shall comply with the height regulations established in this Chapter.

[2] Ground Mounted Solar Systems shall not exceed sixteen feet (16') in height.

[3] Ground Mounted Solar Systems that function as a roof above a parking area shall be subject to applicable accessory structure height limits.

(c) SES shall be sited to maximize on-site agricultural opportunities on remaining agricultural lands to the greatest extent possible. SES shall be sited to preserve existing view sheds along scenic byways to the greatest extent possible.

(d) SES in residential districts shall be located in a side or rear yard to the extent practicable.

(e) Projects that result in significant loss of prime agricultural land or undue impacts to forests, wetlands, habitat protection areas, other natural resources, or environmentally sensitive areas are strongly discouraged and shall be redesigned to avoid or minimize impacts to the maximum extent practicable.

(3) Landscaping and Screening waiver.

(a) In locations where natural features and existing vegetation are proven to meet the screening objectives of this Section, the Planning Commission may waive landscaping and screening requirements in accordance with § 190-186.

(4) Lighting.

(a) If lighting is required it shall be activated by motion sensors and shall be fully shielded and downcast to prevent the light from shining onto adjacent parcels or into the night sky.

(5) Site Maintenance.

(a) The property owner and SES owner shall be jointly and severally responsible to maintain the SES site as follows:

i. Vegetation and ground cover shall be established and maintained not to exceed 12” in height.

ii. Noxious weeds shall be controlled in accordance with State law.

(6) Lot Coverage.

(a) SES above pervious surfaces within the critical area are subject to lot coverage requirements and stormwater regulations.

(b) Except for gravel drip lines and other impervious surfaces, SES outside the critical area are exempt from lot coverage requirements but are not exempt from stormwater regulations.

B. Small Scale SES. The following requirements apply to Small Scale SES.

(1) Screening.

- (a) Small Scale SES shall be screened to shield the system from public view to the maximum extent practicable. Screening shall be designated on a planting plan approved by the Planning Director and shall be maintained throughout the existence of the SES.
- (2) Setbacks.
- (a) Small Scale SES shall comply with required setbacks for the parcel size in the zoning district where the project is located.
- C. Medium and Large Scale SES. The following requirements apply to Medium and Large Scale SES:
- (1) Size Limitation.
- (a) The combined additional aggregate acreage in the agricultural and resource zoning districts (AC, WRC, RC, CP) utilized throughout the County by medium and large scale SES shall not exceed one half percent (.5%) of the total land area in the AC, WRC, RC, and CP zones, or not more than 726 new acres after (*insert effective date of Ordinance*).
- (2) Setbacks.
- (a) Setbacks shall be one-hundred fifty feet (150') from all property lines and edges of rights-of-way. Setbacks may be reduced to minimum setbacks in the base zoning district or any applicable overlay district, whichever is greater, with written consent from the affected adjacent property owner.
- (b) Setbacks shall not be less than required in the base zoning district or overlay, whichever is greater, without a variance.
- (3) Screening.
- (a) The applicant shall submit a landscaping and screening plan, prepared by a licensed professional, along with the major site plan application, to provide vegetative screening from adjoining lands and road rights-of-way and road easements. The plan shall identify existing vegetation, including species, size, and the location of all proposed plant materials to be used for buffering and screening of the SES. Screening shall include a minimum of two staggered rows of evergreen screen trees, interspersed with shrubs and low-lying native vegetation, or an equivalent approved by the SES approving authority. The evergreen trees shall be a minimum of six feet (6') in height when planted, or an equivalent combination of tree and berm height. Existing vegetation within or near a required planting area that meets or exceeds these standards may be used to satisfy screening requirements. All required screening shall be maintained in a live, healthy condition for the duration of the SES and shall be replaced by the owner

89 as necessary to maintain all required screening to the satisfaction of the Planning
90 Director.

91 (4) Fencing.

92 (a) The SES shall be enclosed by a fence or other appropriate barrier to prevent
93 unauthorized persons or vehicles from gaining access.

94 (5) Signage.

95 (a) A sign, not to exceed one (1) square foot, shall be posted at each entrance to the
96 SES to identify the property owner, the SES owner, their contact phone numbers
97 and emergency contact information. Information on the sign shall be kept current
98 and the property and SES owners shall provide all updated information to the
99 Planning Director.

100 (b) Signage indicating “DANGER – HIGH VOLTAGE – KEEP OUT” shall be
101 posted along all SES exterior fencing or barriers.

102 (c) Placards shall be posted to identify the location of the AC power supply
103 emergency disconnects. All other signage required by the electrical, building, or
104 fire code shall be posted as required.

105 (d) No other signage shall be permitted without approval from the County.

106 (e) The site, fencing, or barriers shall not be used to display any advertisements.

107 (6) Abandonment.

108 (a) SES that cease to produce electricity continuously for one (1) year shall be
109 presumed abandoned. The property owner may overcome this presumption by
110 substantial evidence, satisfactory to the Planning Director, that cessation of the
111 use occurred from causes beyond the owner’s reasonable control, that there is no
112 intent to abandon the system, and that resumption of use of the existing system is
113 reasonably practicable.

114 (b) Following abandonment, the operator and landowner shall remove all equipment
115 and systems and restore the site as near as practicable to its original condition.
116 The obligation of the operator and owner to remove the SES and restore the site
117 shall be joint and several.

118 (c) Failure to comply with the requirements of this section shall authorize, but not
119 require, the County to remove the SES and restore the site in accordance with the
120 approved decommissioning plan.

121 (7) Public Notice.

- 122 (a) Prior to filing an application for a site plan for medium or large scale SES or
123 special exception for large scale SES, an applicant shall:
- 124 [1] Erect a sign on the proposed site notifying the public of the applicant's
125 intent to construct a Large Scale SES. The sign design and size shall be
126 approved by the Planning Director.
- 127 [2] Publish in the local newspaper, at the applicant's expense, public notice of
128 the applicant's request for the proposed Large Scale SES, identifying the
129 proposed location, type, height, setbacks, screening, etc. The public notice
130 shall include a map showing the proposed location of the SES site, shall
131 advise the public that a community meeting to discuss the proposed site
132 plan application shall be open to the public and shall be held at least one
133 (1) week prior to the Planning Commission meeting at which the SES site
134 plan application will be heard. The public notice shall be pre-approved by
135 the Planning Director.
- 136 (8) Decommissioning.
- 137 (a) A decommissioning plan shall be required. The plan shall include:
- 138 [1] The expiration date of the contract, lease, easement, or other agreement for
139 installation of the SES and a timeframe for removal of the SES within one
140 (1) year following termination of the use.
- 141 [2] A requirement that the operator and property owner provide written notice
142 to the County whenever a SES is out of active production for more than
143 six (6) months.
- 144 [3] Removal of all above and underground equipment, structures, fencing and
145 foundations.
- 146 [4] Removal of substations, overhead poles, above ground electric lines
147 located on-site or within a public right-of-way that are not usable by any
148 other public or private utility.
- 149 [5] Removal of lot coverage and access roads associated with the SES.
- 150 [6] Re-grading and, if required, placement of like-kind topsoil after removal
151 of all structures and equipment.
- 152 [7] Re-vegetation of disturbed areas with native seed mixes and plant species
153 suitable to the area or evidence of an approved nutrient management plan.
- 154 [8] A recordable covenant executed by the property owner to reclaim the site
155 in accordance with the decommissioning plan and associated approvals
156 upon cessation of the use.

[9] A requirement for County inspection and approval of the decommissioning and reclamation of the SES site.

(9) Financial Assurance.

- (a) The operator or property owner of a Medium or Large Scale SES shall provide a bond, surety, letter or credit, lien instrument, or other financial assurance in a form and amount acceptable to the County to secure payment of 125% of the anticipated cost of removal of all equipment, structures, fencing, above or below ground level, and any accessory structures, and restoration of the site in accordance with the requirements of this section if use of the SES is discontinued continuously for one (1) year. The financial assurance shall be provided prior to issuance of a building permit and shall be renewed so as to remain in full force and effect while the SES remains in place. The financial assurance shall require the obligor and the owner to provide at least ninety (90) days' prior written notice to the County of its expiration or nonrenewal. The Planning Director may adjust the amount of the surety as reasonably necessary from time to time to insure the amount is adequate to cover the cost of decommissioning, removal and restoration of the site.

D. Large Scale SES. The following requirements apply to Large Scale SES:

(1) Location.

- (a) Large Scale SES are prohibited in the RC zoning district.

(2) Mitigation.

- (a) Large Scale SES in the AC, WRC or CP zoning districts shall provide mitigation through a Reservation of Development Rights Agreement approved by the County and recorded among the land records of Talbot County, reserving development rights on an equivalent area of land in the AC, WRC, RC or CP zoning district.

- (b) The required mitigation through the Reservation of Development Rights Agreement shall remain in place and shall be extended as necessary until the SES is abandoned or discontinued, the decommissioning plan has been implemented, the work inspected and approved by the County and applicable portions of the project area have been converted back to active agricultural production.

- (c) Upon termination of the original lease term and any extensions, if the SES is to remain active, mitigation shall be provided pursuant to requirements in effect at that time.

(3) Development Rights.

- (a) An approved SES shall utilize development rights equal to the number of rights attributable to the project area with a minimum reservation of one (1)

193 development right. The property owner shall set aside the requisite number of
194 development rights by a Reservation of Development Rights Agreement approved
195 by the County and recorded among the land records of Talbot County. The
196 Agreement shall restrict development and density rights on the balance of the
197 property to the extent the SES has used those rights for the SES until the SES has
198 been removed, the decommissioning plan has been implemented and the site has
199 been inspected and approved by the County. The number of rights placed under
200 reservation shall be calculated using the base density multiplied by the total area
201 of land encumbered by the SES and all its appurtenances.

202 (b) Provided a minimum of six (6) acres is unencumbered by the SES, the three (3)
203 additional development rights permitted in the AC, CP, WRC, and TC zoning
204 districts shall be excluded from the required reservation of development rights.
205 The remaining land unencumbered by the SES and the Reservation of
206 Development Rights Agreement may be developed in accordance with the cluster
207 requirements as defined in this Chapter.

208 (c) Lots, parcels, or parts thereof are ineligible for Large Scale SES if the
209 development rights have already been preserved, conserved, reserved or otherwise
210 allocated for the area of land to be utilized for the SES.

211 (4) Public Notice.

212 (a) Prior to filing an application for a site plan or special exception, an applicant shall:

213 [1] Mail written notice of the SES proposal to all adjoining property owners,
214 including property owners across water bodies that are within one thousand
215 (1,000) feet of the property proposed for the SES site.

216 (b) At least one (1) week prior to the Planning Commission meeting at which the SES
217 site plan application is scheduled to be reviewed, the applicant shall conduct a
218 community meeting open to the public to discuss the proposed site plan
219 application. The applicant shall conduct the community meeting. The meeting
220 shall be held at the applicant's expense and staffing. County staff is not required to
221 attend the community meeting.

222 * * *

223 **§190.208. Terms Defined.**

224 * * *

225 GROUND MOUNT SOLAR SYSTEM – A Solar Energy System consisting of
226 solar modules held in place by racks or frames that are attached to ground-based
227 mounting supports or resting on the ground, including solar modules that function
228 as a roof above a parking area, such as a carport.

229 * * *

230 KILOWATT (kW) – A measure of the use of electrical power equal to 1,000
231 Watts.

232 * * *

233 MEGAWATT (MW) – A measure of the use of electrical power equal to 1,000
234 kilowatts.

235 * * *

236 NET METER – A means of connecting an on-grid Solar Energy System to the
237 utility grid, typically provided, sanctioned and installed by the local utility to
238 measure the flow of electricity to and from the utility customer for the purpose of
239 receiving a net credit for any excess electricity generated on-site and provided to
240 the utility grid.

241 * * *

242 OFF-GRID – A Solar Energy System which is not electrically connected in any
243 way to electric circuits (grid) that are provided and owned by an electric utility
244 company for the purpose of delivering electricity to or from a home, building,
245 structure, etc.

246 * * *

247 ON-GRID – A Solar Energy System that is electrically connected to the electric
248 utility grid.

249 * * *

250 ROOFTOP SOLAR SYSTEM – A Solar Energy System that has its electricity-
251 generating solar panels mounted or resting on the rooftop of a residential or
252 commercial building or structure. The various components of such a system
253 include photovoltaic modules, mounting systems, cables, solar inverters and other
254 electrical accessories.

255 * * *

256 SOLAR ENERGY SYSTEM (SES) – Solar collectors, panels, controls, energy
257 storage devices, heat pumps, heat exchangers, and other materials, hardware or
258 equipment necessary to the process by which solar radiation is collected,
259 converted into another form of energy, stored, protected from unnecessary
260 dissipation and distributed. Solar systems include solar thermal and photovoltaic.

261 SOLAR ENERGY SYSTEM (SES), LARGE SCALE – SES that is engineered
262 and designed to produce at least two megawatts (2 MW) of power or utilize more
263 than ten (10) acres.

264 SOLAR ENERGY SYSTEM (SES), MEDIUM SCALE – SES that is engineered
265 and designed to produce at least two hundred kilowatts (200kW) but less than two
266 megawatts (2 MW) of power. Medium Scale SES may utilize more than one (1)
267 acre but not more than ten (10) acres.

268 SOLAR ENERGY SYSTEM (SES), SMALL SCALE – SES that produce less
269 than two hundred kilowatts (200kW) of power and utilizes less than one (1) acre.
270 Small Scale SES include Rooftop Solar Systems of any size.

* * *

Insert Table III-I General Table of Land Uses here

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SECTION TWO: BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter § 213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION THREE: AND BE IT FURTHER ENACTED, that if any provision of this Bill or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of the Bill which can be given effect without the invalid provision or application, and for this purpose the provisions of this Bill are declared severable.

SECTION FOUR: AND BE IT FURTHER ENACTED, that the Publishers of the *Talbot County Code* or the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, may make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation included in this Bill, as finally adopted, that are incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION FIVE: AND BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

[Balance of this page intentionally left blank]

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. _____ having been published, a public hearing was held on _____ at _____ in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the third time.

ENACTED: _____

By Order _____
Susan W. Moran, Secretary

Pack -

Williams -

Bartlett -

Price -

Callahan -

EFFECTIVE DATE: _____